



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

January 29, 1996

Mr. Geoffrey S. Connor
General Counsel
Texas Natural Resource Conservation Commission
P.O. Box 13087
Austin, Texas 78711-3087

OR96-0106

Dear Mr. Connor:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 37696.

The Texas Natural Resource Conservation Commission (the "commission") received a request for:

All documents considered by or that were before the Commission for the November 16, 1995 Agenda relating to Docket No. 95-1550-IWD at the time of the Commissioners' decision, including, but not limited to, any pleadings or letters of Requestor, Executive Director, Applicant, and Public Interest Counsel, and any summaries, advice, or information prepared by the staff of the Executive Director's office or the General Counsel's office.

You state that the commission has provided the requestor with all of the requested information with the exception of one document. You claim that portions of that document are excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claimed and have reviewed the document at issue.

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney

or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. Section 552.107(1) does not protect purely factual information. *Id.* We have reviewed the subject document and conclude that some of the information you have marked is privileged information that is excepted from disclosure under section 552.107(1). However, a portion of the information you have marked is purely factual and severable from the advice, opinion, or recommendation protected from disclosure by section 552.107(1). We have marked the submitted document to indicate the information that may be withheld under section 552.107(1).

We next address whether the factual portions of this document are excepted from disclosure under section 552.111 of the Government Code. Section 552.111 excepts "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." In Open Records Decision No. 615 (1993), this office re-examined the predecessor to the section 552.111 exception in light of the decision in *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408 (Tex. App.--Austin 1992, no writ), and held that section 552.111 excepts only those internal communications consisting of advice, recommendations, opinions, and other material reflecting the policymaking processes of the governmental body. An agency's policymaking functions, however, do not encompass internal administrative or personnel matters; disclosure of information relating to such matters will not inhibit free discussion among agency personnel as to policy issues. Open Records Decision No. 615 (1993) at 5-6. In addition, section 552.111 does not except from disclosure purely factual information that is severable from the opinion portions of internal memoranda. *Id.* at 4-5. As the factual portions of this document are severable from the opinion portion of the document, they are not excepted from disclosure by section 552.111.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Stacy E. Sallee
Assistant Attorney General
Open Records Division

SES/ch

Ref.: ID# 37696

Enclosure: Marked document

cc: Mr. Richard Lowerre
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(w/o enclosure)